

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	
Robert C. Gahring	:	Case No. 19-22670-CMB
Barbara L. Gahring	:	Chapter 13
Debtor(s)	:	
	:	
Ronda J. Winnecour, Chapter 13	:	
Trustee	:	
	:	
Movant	:	
	:	
vs.	:	
	:	
PHH Mortgage Corporation,	:	
U.S. Bank National Association	:	
	:	
	:	Hearing Date
Respondent(s)	:	

TRUSTEE'S MOTION TO PRECLUDE NOTICE OF POST-PETITION
MORTGAGE FEES, EXPENSES, AND CHARGES

Ronda J. Winnecour, Chapter 13 Standing Trustee, respectfully
represents the following:

1. This case was filed on July 2, 2019.
2. PHH Mortgage Corporation ("Respondent") filed a Notice of Post-Petition Mortgage Fees, Expenses, And Charges on October 21, 2021.
3. The Trustee avers that the charges in the Notice should be disallowed or limited.
4. The notice lists attorney's fees incurred on February 5, 2021 in the amount of \$850.00, and filing fees and courts incurred on February 5, 2021 in the amount of \$188.00.
5. Federal Rule of Bankruptcy Procedure 3002.1(c) provides that "[t]he notice [of post-petition mortgage, fees, expenses, and charges] shall be

- served within 180 days after the date on which the fees, expenses, or charges are incurred.”
6. Respondent’s Notice was not filed within 180 days after the date on which the fees, expenses, and charges were incurred. Therefore, the Notice should be disallowed in its entirety.
 7. Furthermore, Pennsylvania law controls. The mortgage is a “residential mortgage” as defined by 41 P.S. § 101. Per 41 P.S. §406, prior to the commencement of a foreclosure or other legal action, a residential mortgage lender may only charge attorneys’ fees which are reasonable and actually incurred up to \$50.00. Bankruptcy related services do not constitute other legal action. *In re Graboyes*, 223 Fed. Appx.112 (3d Cir. 2007), *In re DeTone*, 262 B.R. 359 (Bankr. W.D. Pa. 2001).
 8. Respondent has not provided any documentation indicating that a foreclosure proceeding has commenced.
 9. Therefore, the Trustee challenges the fees on the basis that they exceed the allowable amounts. 41 P.S. §406(a)(3). *Quicken Loans, Inc. v Winnecour (In re Dworek)*, 2018 Bankr. LEXIS 2508, 2018 WL 4027475 (Bankr. W.D. Pa. August 22, 2018).
 10. Furthermore, the attorney’s fees of \$850.00 appear to be a flat rate. However, reasonable legal fees in this district are determined by the lodestar formula, which requires multiplying the number of hours reasonable expended by a reasonable hourly rate. The notice does not contain proof of either. *Sadler v. Balboa Capital Corp.*, 2014 U.S. Dist. LEXIS 27169 (W.D. Pa. 2014).

11. The Trustee is concerned that even if the creditor seeks to withdraw the Notice of Post-Petition Mortgage Fees, Expenses, and Charges that the charges will remain on the creditor's records and will be improperly assessed against the loan. The Trustee requests that this Honorable Court order the creditor to provide proof that the loan history has been corrected even if the creditor seeks to withdraw the Notice.

12. The Trustee requests that this Court enter an Order that preclude the Creditor from assessing the cost of defending this Objection to the debtor or the loan.

WHEREFORE, the Trustee respectfully requests that the Notice be disallowed and that this Honorable Court order the Respondent to provide proof that the records have been adjusted to remove these charges.

9/30/2022
Date

/s/Ronda J. Winnecour
Ronda J. Winnecour (PA I.D. #30399)
Attorney and Trustee
U.S. Steel Tower – Suite 3250
600 Grant Street
Pittsburgh, PA 15219
(412)471-5566
cmecf@chapter13trusteewdpa.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:	:	
Robert C. Gahring	:	Case No. 19-22670-CMB
Barbara L. Gahring	:	Chapter 13
Debtor(s)	:	
	:	
Ronda J. Winnecour, Chapter 13	:	
Trustee	:	
	:	
Movant	:	
	:	
vs.	:	
	:	
PHH Mortgage Corporation,	:	
U.S. Bank National Association	:	
	:	
	:	Hearing Date
Respondent(s)	:	

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I served a true and correct copy of the foregoing pleading, proposed order and hearing notice upon the following, by regular United States mail, postage prepaid:

Joseph S. Sisca, Esquire
Assistant U.S. Trustee
1001 Liberty Avenue, Suite 970
Pittsburgh, PA 15222

Robert C. Gahring
Barbara L. Gahring
466 Unionville Road
Butler, PA 16001

Brian C. Thompson, Esquire
Thompson Law Group PC
125 Warrendale-Bayne Road
Warrendale, PA 15086

PHH Mortgage Corporation
1 Mortgage Way, Mail Stop SV-22
Mt. Laurel, NJ 08054

PHH Mortgage Corporation
c/o Rushmore Loan Management Services
P.O. Box 5452
Mt. Laurel, NJ 08054

Mario Hanyon, Esquire
Brock & Scott, PLLC
302 Fellowship Road, Ste 130
Mt. Laurel, NJ 08054

U.S. Bank National Association
c/o Rushmore Loan Management Services
P.O. Box 55004
Irvine, CA 92619-2708

U.S. Bank National Association
c/o Rushmore Loan Management Services
P.O. Box 52708
Irvine, CA 92619-2708

Lauren M. Moyer, Esquire
Friedman Vartolo LLP
1325 Franklin Avenue, Suite 160
Garden City, NY 11530

Andrew Cecere, CEO
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402
*served via certified mail

Robert Conley, CEO
PHH Mortgage
1 Mortgage Way
Mt. Laurel, NJ 08054
*served via certified mail

9/30/2022
Date

/s/Renee Ward
Administrative Assistant
Office of the Chapter 13 Trustee
US Steel Tower – Suite 3250
600 Grant Street
Pittsburgh, PA 15219
(412) 471-5566
cmecf@chapter13trusteewdpa.com